

EDGET HOLWELL

08 CIV 63857

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

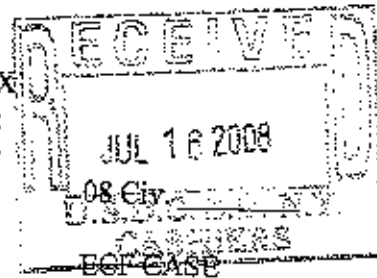
PACIFIC BULK SHIPPING LTD.,

Plaintiff,

- against -

PT DHARMA ROSADI INTERNASIONAL a/k/a
PT DHARMA ROSADI INTERNATIONAL; and
OMEGA NOBLE INTERNATIONAL LTD.,

Defendants.



VERIFIED COMPLAINT

Plaintiff, PACIFIC BULK SHIPPING LTD., (hereinafter "Plaintiff") by and through its attorneys, Lennon, Murphy & Lennon, LLC, as and for its Verified Complaint against the Defendants, PT DHARMA ROSADI INTERNASIONAL a/k/a PT DHARMA ROSADI INTERNATIONAL ("Dharma") and OMEGA NOBLE INTERNATIONAL LTD. ("Omega")(collectively referred to as "Defendants"), alleges, upon information and belief, as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and 28 United States Code § 1333. This claim involves the breach of maritime contract of charter. This matter also arises under the Court's federal question jurisdiction within the meaning of 28 United States § 1331 and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (9 U.S.C. § 201 *et seq.*) and/or the Federal Arbitration Act (9 U.S.C. § 1 *et seq.*).

2. At all times material to this action, Plaintiff was, and still is, a foreign company duly organized and operating under foreign law.

3. At all material times Plaintiff was the Owner of the ocean going motor vessel "OCEAN PRINCE" (hereinafter the "Vessel").

4. Upon information and belief, Defendant Dharma was, and still is, a foreign corporation, or other business entity organized and existing under foreign law.

5. Upon information and belief, Defendant Omega was, and still is, a foreign corporation, or other business entity organized and existing under foreign law, and was, and still is, a trade name, alias, alter-ego, paying agent, receiving agent, and/or joint venturer of Dharma who is now, or will soon be, holding assets belonging to Dharma.

6. Pursuant to a charter party dated April 21, 2008 Plaintiff chartered the Vessel to Defendant Dharma for the carriage of cargo by sea.

7. During the course of the charter, disputes arose between the parties regarding Dharma's failure to pay demurrage charges due and owing under the charter party.

8. Taking into account charges (despatch) for Dharma's account, as a result of Dharma's breach of charter party contract, Plaintiff has sustained damages in the principal amount of \$103,895.76, exclusive of interest, arbitration costs and attorneys fees. *See demurrage and despatch calculations annexed hereto as Exhibits "1" and "2" respectively.*

9. In accordance with the Charter Party, disputes between the parties are to be submitted to arbitration in Hong Kong with English law to apply.

10. Despite due demand, Dharma has failed to pay the amounts due and owing to Plaintiff. *Please find attached hereto as Exhibit "3" an invoice for the amount demanded.*

11. Plaintiff will initiate arbitration in Hong Kong after the commencement of this action and jurisdiction is obtained over Defendant(s).

12. This action is brought in order to obtain jurisdiction over Defendant(s) and also to obtain security for Plaintiff's claims and in aid of arbitration proceedings.

13. Interest, costs and attorneys' fees are routinely awarded to the prevailing party under English Law. Section 63 of the English Arbitration Act of 1996 specifically allows for recovery of these items as part of an award in favor of the prevailing party. As best as can now be estimated, Plaintiff expects to recover the following amounts at arbitration as the prevailing party:

A.	Principal claim:	\$ 103,895.76
B.	Interest on claims: 3 years at 7.5%, compounded quarterly	\$ 25,944.47
C.	Estimated attorney's fees and expenses and arbitration costs:	\$ 100,000.00
Total		\$ 229,840.23

14. Defendant Dharma is the alter-ego of Defendant Omega because it dominates and disregards Omega's corporate form to the extent that Dharma is actually carrying on Omega's business and operations as if the same were its own, or vice versa.

15. Upon information and belief, Defendant Omega is a shell-corporation through which Defendant Dharma conducts its business, or vice versa.

16. Upon information and belief, Defendant Dharma has no separate, independent identity from Defendant Omega.

17. Upon information and belief, Dharma uses Omega as a "paying/receiving agent" or "pass through" entity such that it can insulate itself from creditors relating to its commercial obligations and in particular its vessel charters.

18. It is not general practice in the maritime community, nor anywhere else, for independent companies to make or receive large payments on behalf of other independent companies.

19. Payments sent or received on behalf of another independent company are suggestive of a relationship that is not "arms length."

20. Upon information and belief, Omega makes payments on Dharma's behalf where Omega has absolutely no contractual obligation to Dharma's creditors.

21. Upon information and belief, Omega made a freight payment to Plaintiff amounting to 100% of the freight owed under the subject charter party (not including the above demurrage charges) where Omega had absolutely no contractual obligation to do so.

22. Furthermore, upon information and belief, Dharma refers to itself as Omega.

23. In the wire remittance details for the freight payment made under the subject charter party, Omega admits that it is the true sender of the payment, even though it came from Omega's account, stating the following:

"M.V OCEAN PRINCE/PBC005/08-V2-1-100 PERCENT OCEAN FREIGHT
TRANSFER FROM PT DHARMA ROSADAI INTERNATIONAL."

24. Upon information and belief, Dharma exercises control over Omega's accounts and business operations.

25. Upon information and belief, Dharma and Omega commingle funds.

26. Based on the foregoing, as well as other activities, Dharma and Omega should be considered as a single economic unit with no corporate distinction between or among them, rendering each liable for the debts of the other, and all assets of Omega susceptible to attachment and/or restraint for the debts of Dharma.

27. By virtue of the foregoing, Omega is properly considered a party to the subject contract as the trade name, alias, alter ego and/or paying agent of Defendant Dharma.

28. In the further alternative, Defendants are partners and/or joint venturers.

29. In the further alternative, Defendants are affiliated companies such that Omega is now, or will soon be, holding assets belonging to Dharma, or vice versa.

30. The Defendants cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but, upon information and belief, Defendant(s) have, or will have during the pendency of this action, assets within this District and subject to the jurisdiction of this Court, held in the hands of one or more garnishees which are believed to be due and owing to the Defendants. *See Affidavit in Support of Attachment annexed hereto as Exhibit "4."*

31. The Plaintiff seeks an order from this court directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, and also pursuant to the United States Arbitration Act, 9 U.S.C. §§ 1 and 8, attaching, *inter alia*, any assets of the Defendant(s) held by the aforesaid garnishee for the purpose of obtaining personal jurisdiction over the Defendants, and to secure the Plaintiff's claims as described above.

WHEREFORE, Plaintiff prays:

A. That process in due form of law issue against the Defendants, citing them to appear and answer under oath all and singular the matters alleged in the Verified Complaint;

B. That the Court retain jurisdiction to compel the Defendant(s) to arbitrate in accordance with the United States Arbitration Act, 9 U.S.C. § 1 *et seq.*;

C. That pursuant to 9 U.S.C. §§ 201. *et seq.* this Court recognize and confirm any judgment rendered on the claims had herein as a Judgment of this Court;

D. That since the Defendants cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, also pursuant to the United States Arbitration Act, 9 U.S.C. §§ 1 and 8, attaching all goods, chattels, credits, letters of credit, bills of lading, effects, debts and monies, tangible or intangible, or any other funds held by any garnishee within the District which are due and owing to the Defendant(s), in the amount \$229,840.23 calculated to date to secure the Plaintiff's claims, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B answer the matters alleged in the Complaint;

E. That this Court recognize and confirm any arbitration award(s) or judgment(s) rendered on the claims set forth herein as a Judgment of this Court

F. That this Court retain jurisdiction over this matter through the entry of any judgment or award associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof;

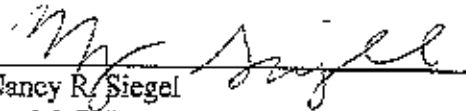
G. That in the alternative, this court enter Judgment against the Defendants on the claims set forth herein;

H. That this Court award Plaintiff its attorney's fees and costs of this action; and

I. That the Plaintiff have such other, further and different relief as the Court may deem just and proper.

Dated: July 16, 2008
New York, NY

The Plaintiff,
PACIFIC BULK SHIPPING LTD.,

By: 
Nancy R. Siegel
Patrick F. Lennon
LENNON, MURPHY & LENNON, LLC
420 Lexington Ave., Suite 300
New York, NY 10170
(212) 490-6050 – phone
(212) 490-6070 – fax
nrs@lenmur.com
pfl@lenmur.com

ATTORNEY'S VERIFICATION

State of New York)
) ss.: City of New York
County of New York)

1. My name is Nancy R. Siegel
2. I am over 18 years of age, of sound mind, capable of making this
Verification, and fully competent to testify to all matters stated herein.
3. I am an attorney in the firm of Lennon, Murphy & Lennon, LLC, attorneys for the
Plaintiff.
4. I have read the foregoing Verified Complaint and know the contents
thereof and believe the same to be true and accurate to the best of my knowledge, information
and belief.
5. The reason why this Verification is being made by the deponent and not
by the Plaintiff is that the Plaintiff is a business organization with no officers or directors now
within this District.
6. The source of my knowledge and the grounds for my belief are the
statements made, and the documents and information received from, the Plaintiff and agents
and/or representatives of the Plaintiff.
7. I am authorized to make this Verification on behalf of the Plaintiff.

Dated: July 16, 2008
 New York, NY


Nancy R. Siegel

EXHIBIT "I"

4/5/2008 16:21

Chtrs: PT DHARMA ROSADI INT'L c/o BROMAR

Laytime Calculation

C/P date 21-Apr-08

MV OCEAN PRINCE

PBC005V2

discharging	LIANYUNGANG		
Demurrage	USD48,000.00	per day pro rata lts	
Despatch	USD24,000.00	per day pro rata lts	
Cargo quantity	51,080.000	mts	
discharging rate	12,000.000	mts /	pwwd SHINC
Vessel arrived	12-May-08	19:48	
NOR tendered	12-May-08	19:48	
NOR Valid/accepted	as per c/p		
Shifting to berth	16-May-08	13:12	
Berthed	16-May-08	16:12	
discharging commenced	16-May-08	16:50	
Laytime commenced	13-May-08	07:48	12 hrs TT USC
discharging ops completed	22-May-08	18:30	

Date	Day	From hrs	To hrs	Rate %	Used d h : m	Total d h : m	Remarks
13-May-08	Tue	07:48	24:00	100.00	0 16:12	0 16:12	07:48 lytm commenced
14-May-08	Wed	00:00	24:00	100.00	1 00:00	1 16:12	
15-May-08	Thu	00:00	24:00	100.00	1 00:00	2 16:12	
16-May-08	Fri	00:00	13:12	100.00	0 13:12	3 05:24	
		13:12	16:12	0.00	0 00:00	3 05:24	vsl shifting
		16:12	16:50	100.00	0 00:38	3 06:02	
		16:50	24:00	100.00	0 07:10	3 13:12	16:50 dischg commenced
17-May-08	Sat	00:00	16:58	100.00	0 16:58	4 06:10	
		16:58	24:00	100.00	0 07:02	4 13:12	<u>16:58 vsl on demurrage</u>
18-May-08	Sun	00:00	24:00	100.00	1 00:00	5 13:12	
19-May-08	Mon	00:00	24:00	100.00	1 00:00	6 13:12	
20-May-08	Tue	00:00	24:00	100.00	1 00:00	7 13:12	
21-May-08	Wed	00:00	24:00	100.00	1 00:00	8 13:12	
22-May-08	Thu	00:00	18:30	100.00	0 18:30	9 07:42	18:30 completed dischg
Time allowed				4 06:10	(4.25667 days)		
Time used				9 07:42	(9.32083 days)		
time lost				5 01:32	(5.06416 days)		

demurrage due

US\$243,079.68

EXHIBIT "2"

4/6/2008/15:21

Chtrs : PT DHARMA ROSADI INTL c/o BROMAR

Laytime Calculation

C/P date 21-Apr-08

MV OCEAN PRINCE

PBC005V2

loading	TAMBEA, INDONESIA		
Demurrage	USD48,000.00	per day pro rata lts	
Despatch	USD24,000.00	per day pro rata lts	
Cargo quantity	51,080.000	mts	
loading rate	5,000.000	mts /	pw-wd SHINC
Vessel arrived	27-Apr-08	12:00	
NOR tendered	27-Apr-08	12:00	
NOR Valid/accepted	as per c/p		
Pilot on board	27-Apr-08	14:30	
Vessel anchored	27-Apr-08	15:30	
Loading commenced	27-Apr-08	20:15	
Laytime commenced	27-Apr-08	20:15	12 hrs TT USC justut
Loading ops completed	3-May-08	07:00	

Date	Day	From	To	Rate	Used	Total	Remarks
		hrs	hrs	%	d h : m	d h : m	
27-Apr-08	Sun	20:15	24:00	100.00	0 03:45	0 03:45	20:15 lym commenced
28-Apr-08	Mon	00:00	24:00	100.00	1 00:00	1 03:45	
29-Apr-08	Tue	00:00	11:30	100.00	0 11:30	1 15:15	
		11:30	12:30	0.00	0 00:00	1 15:15	bad weather, rain NTC
		12:30	15:15	100.00	0 02:45	1 18:00	
		15:15	17:40	0.00	0 00:00	1 18:00	bad weather, rain NTC
		17:40	19:00	100.00	0 01:20	1 19:20	
		19:00	21:50	0.00	0 00:00	1 19:20	bad weather, rain NTC
		21:50	24:00	100.00	0 02:10	1 21:30	
30-Apr-08	Wed	00:00	12:02	100.00	0 12:02	2 03:32	
		12:02	14:55	0.00	0 00:00	2 03:32	bad weather, rain NTC
		14:55	17:10	100.00	0 02:15	2 11:47	
		17:10	19:46	0.00	0 00:00	2 11:47	bad weather, rain NTC
		19:46	24:00	100.00	0 04:14	2 16:01	
1-May-08	Thu	00:00	01:00	100.00	0 01:00	2 17:01	
		01:00	01:26	0.00	0 00:00	2 17:01	bad weather, rain NTC
		01:26	05:25	100.00	0 03:59	2 21:00	
		05:25	16:20	0.00	0 00:00	2 21:00	bad weather, rain NTC
		16:20	24:00	100.00	0 07:40	3 04:40	
2-May-08	Fri	00:00	07:20	100.00	0 07:20	3 12:00	
		07:20	09:00	0.00	0 00:00	3 12:00	bad weather, rain NTC
		09:00	24:00	100.00	0 15:00	4 03:00	
3-May-08	Sat	00:00	07:00	100.00	0 07:00	4 10:00	07:00 completed loading
					d h : m		
Time allowed					10 06:11	(10.21800 days)	
Time used					4 10:00	(4.41667 days)	
Time save					5 19:11	(5.79933 days)	

despatch due

US\$139,183.92

EXHIBIT "3"

PACIFIC BULK SHIPPING LTD.

c/o Rm 2212, 22/F West Tower Shun Tak Centre, 168-200 Connaught Road C. HK

Tel : (852) 2581-1699

Fax : (852) 2581-1799

E-Mail : shipping@pacificbulk.com

Telex : 94075876 BULK G

To: PT Dharma Rosadi Internasional

Inv. No.: PBC005/08-V2-2

Inv. Date: 03-Jun-08

Due Date: 11-Jun-08

INVOICE

Description	Amount (USD)
Vessel: M.V. "Ocean Prince"	
C/P dated: 21-Apr-08	
B/L dated: 03-May-08	
Voyage: Tambea, Ponnasa, South East Sulawesi, Indonesia / Lianyungang, China	
Cargo: 51,080.000 mts nickel ore, in bulk	
Despatch: At loadport - Tambea	(\$139,183.92)
Demurrage: At disport - Lianyungang	\$243,079.68
Total in Owners favour	<u>\$103,895.76</u>
Say Total U.S. Dollars One Hundred and Three Thousand Eight Hundred Ninety-Five and Cents Seventy-Six Only.	
Please remit above amount to our bank account as follows:	
Beneficiary's Bank:	HSBC, Hong Kong
Swift Code:	HSBCHKHHHKH
Beneficiary:	Pacific Bulk Shipping Co., Ltd.
Bank Address:	G/F 35 Bonham Strand, Sheung Wan, Hong Kong
Beneficiary's A/C No.:	459-212650-838
Ref:	M.V. "Ocean Prince" / PBC005/08-V2-2 - Dem/Des Settlement
Thanks your attention and please confirm your remittance by return	

For and on behalf of
PACIFIC BULK SHIPPING LIMITED

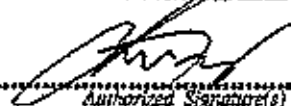

Authorized Signature(s)

EXHIBIT "4"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PACIFIC BULK SHIPPING LTD.,

Plaintiff,

- against -

PT DHARMA ROSADI INTERNASIONAL a/k/a
PT DHARMA ROSADI INTERNATIONAL; and
OMEGA NOBLE INTERNATIONAL LTD.,

Defendants.

08 Civ. _____

ECF CASE

AFFIDAVIT IN SUPPORT OF PRAYER FOR MARITIME ATTACHMENT

State of Connecticut)
) ss: SOUTHPORT
County of Fairfield)

Nancy R. Siegel, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and represent the Plaintiff herein. I am familiar with the facts of this case and make this Affidavit in support of Plaintiff's prayer for the issuance of a Writ of Maritime Attachment and Garnishment, pursuant to Rule B of the Supplemental Admiralty Rules of the Federal Rules of Civil Procedure.

DEFENDANTS ARE NOT PRESENT IN THE DISTRICT

2. I have attempted to locate the Defendants, PT DHARMA ROSADI INTERNASIONAL a/k/a PT DHARMA ROSADI INTERNATIONAL and OMEGA NOBLE INTERNATIONAL LTD., within this District. As part of my investigation to locate the Defendants within this District, I checked the telephone company information directory, as well as the white and yellow pages for New York listed on the Internet or World Wide Web, and did

not find any listing for the Defendants. Finally, I checked the New York State Department of Corporations' online database which showed no listings or registration(s) for the Defendants.

3. I submit based on the foregoing that the Defendants cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims.

4. Upon information and belief, the Defendants have, or will have during the pendency of this action, tangible and intangible property within this District and subject to the jurisdiction of this Court, held in the hands of in the hands of garnishees within this District, which are believed to be due and owing to the Defendants.

5. This is Plaintiff's first request for this relief made to any Court.

PRAYER FOR RELIEF FOR ORDER ALLOWING SPECIAL PROCESS SERVER

6. Plaintiff seeks an Order pursuant to Rule 4(c) of the Federal Rules of Civil Procedure, for an Order appointing Patrick F. Lennon, Kevin J. Lennon, Charles E. Murphy, Nancy R. Siegel, Colleen A. McEvoy or any other partner, associate, paralegal or agent of Lennon, Murphy & Lennon, LLC, or any process server employed by Gotham Process Servers, in addition to the United States Marshal, to serve the Ex Parte Order and Process of Maritime Attachment and Garnishment, together with any interrogatories, upon the garnishee(s), together with any other garnishee(s) who (based upon information developed subsequent hereto by the Plaintiff) may hold assets of, for or on account of, the Defendants.

7. Plaintiff seeks to serve the prayed for Process of Maritime Attachment and Garnishment with all deliberate speed so that it may be fully protected against the potential of being unable to satisfy a judgment/award ultimately obtained by Plaintiff and entered against the Defendants.

8. To the extent that this application for an Order appointing a special process server with respect to this attachment and garnishment does not involve a restraint of physical property, there is no need to require that the service be effected by the Marshal as it involves simple delivery of the Process of Maritime Attachment and Garnishment to the various garnishees to be identified in the writ.


PRAYER FOR RELIEF TO SERVE LATER IDENTIFIED GARNISHEES

9. Plaintiff also respectfully requests that the Court grant it leave to serve any additional garnishee(s) who may, upon information and belief obtained in the course of this litigation, to be holding, or believed to be holding, property of the Defendants, within this District. Obtaining leave of Court at this time to serve any later identified garnishees will allow for prompt service of the Process of Maritime Attachment and Garnishment without the need to present to the Court amended Process seeking simply to identify other garnishee(s).

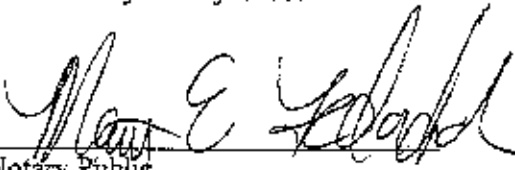
PRAYER FOR RELIEF TO DEEM SERVICE CONTINUOUS

10. Further, in order to avoid the need to repetitively serve the garnishees/banks, Plaintiff respectfully seeks further leave of the Court, as set out in the accompanying Ex Parte Order for Process of Maritime Attachment, for any process that is served on a garnishee to be deemed effective and continuous service of process throughout any given day on which process is served and throughout the next day, provided that process is served the next day, and to authorize service of process via facsimile or e-mail following initial *in personam* service.

Dated: July 16, 2008
Southport, CT


Nancy R. Siegel

Sworn and subscribed to before me
this 16th day of July 2008.


Notary Public